

# The Hochfelder Report

## THE CONSUMER'S GUIDE TO INJURY LAWSUITS IN NEW YORK

NECK INJURIES

ISSUE 1

### How New York Juries Decide the Value of Pain and Suffering in Neck Injury Cases

The Hochfelder Report provides facts and estimated ranges of value for New York pain and suffering for specific traumatic injuries. Often in trauma cases, many body parts are injured. As a result, the verdicts, settlements and case histories that you often hear discussed on the evening news or in the newspaper do not help you determine the value of your injury when you have injured only one body part.

Often, in cases involving neck injuries — resulting from slip/trip and fall trauma, car accident trauma or construction accidents — the victim has other injuries as well. These frequently include back and shoulder injuries. Therefore, please understand that if you have suffered a traumatic injury to more than one part of your body, you should use the information in The Hochfelder Report only as a starting point. The value of your case could be much less or much more than the amounts discussed here.

### Special Notes on Neck Injuries

Many neck injuries are caused by car accidents. There is a law in New York (Insurance Law Article 52) which severely restricts the ability of car accident victims to recover pain and suffering damages, especially in herniated disc cases. A plaintiff must prove that he sustained one of the nine enumerated categories of a “serious injury.” For herniated disc cases, this usually means that

the case will be dismissed in the absence of an objectively determined permanent injury.

All three of the following matters have been raised by the defense time and again in front of jurors with great success in limiting or denying plaintiffs’ injury claims:

1. Many trauma victims alleging neck injuries have suffered spinal injuries in the past or have degenerative chronic conditions.
2. It’s been shown scientifically that many people over 40 years of age have herniated discs, even without knowing about them.
3. Many car accidents that cause significant neck injuries involve little or no damage to the car raising doubts in the minds of juries as to causation.

If we haven’t discussed your injury, you’re invited to call John Hochfelder, who will gladly discuss your injuries with you at no cost or obligation. You’re invited to call John toll free at 1-800-530-4660, or locally, 914-686-0900.

Please understand that the values set forth here are for pain and suffering only, and, also, we have eliminated as much as possible cases in which there are significant injuries in addition to the neck. The dollar amounts can be much higher when an injured person also incurs significant lost wages, significant medical expense payments and



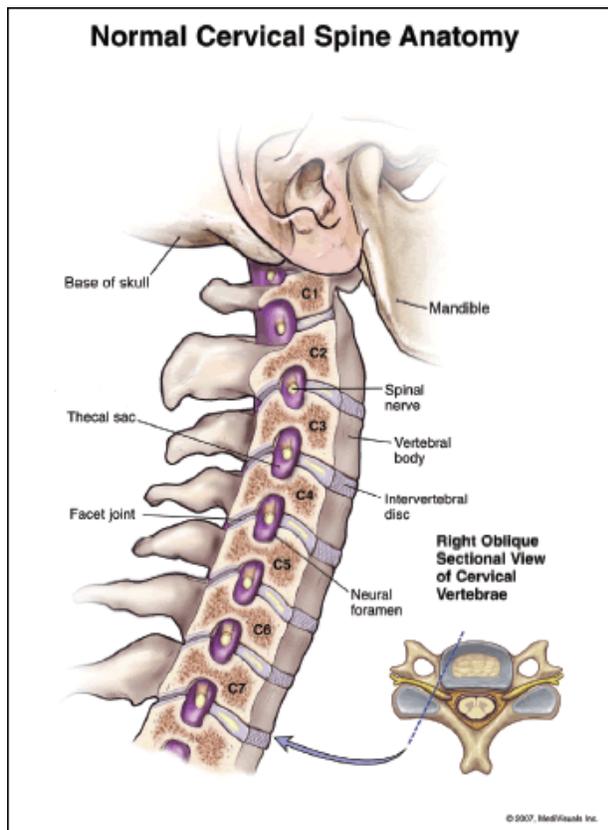
**John Hochfelder** is a New York traumatic injury trial attorney who handles all types of personal injury claims and lawsuits. He is a member of the New York State Bar Association and New York State Trial Lawyers Association, and served as a Judge for five years in Westchester County. Actively involved in his community, Mr. Hochfelder has been a certified Emergency Medical Technician and is regularly called upon to lecture area Ambulance Corps on EMS liability issues and lawsuits. Visit John’s website at [www.newyorkinjurycases.com](http://www.newyorkinjurycases.com) and his blog at [www.newyorkinjurycasesblog.com](http://www.newyorkinjurycasesblog.com).

other so-called special or out of pocket damages or there are significant injuries in addition to the neck.

Now, here are the estimated New York pain and suffering values of injuries based on the circumstances described:

**Nominal Range of Value for Pain and Suffering for Neck Injuries: \$0 to \$75,000**

Pain and suffering in a neck injury case is often in the \$0 to \$75,000 range when any or all of the following factors are present: disc bulges only (no herniations); a car accident in which plaintiff cannot meet the “serious injury” statutory threshold; no surgery; a significant pre-existing neck injury; excellent recovery; no likely future pain or disability; trial in an area where juries are conservative.



**Actual Case: \$ 0** – A Rockland County jury found that a 22 year old college student had not sustained a serious injury as a result of his car being struck in the rear by defendant. Plaintiff sustained disc herniations at C4-5 and C5-6 as well a tear of his shoulder’s rotator cuff. He underwent four months of physical therapy and shoulder surgery. There was evidence that plaintiff was previously engaged in martial arts, weight lifting and baseball pitching and a radiologist testified that plaintiff’s herniations did not impinge on nerve roots.

**Actual Case: \$50,000** pain and suffering jury verdict in Rockland County for a 48 year old man in a car accident who suffered a herniated disc. Evidence was presented that plaintiff had a long-standing, pre-existing degenerative disc condition. While the jury found that plaintiff did not suffer any permanence, they did find that he met the statutory serious injury requirement that due to the accident plaintiff could not perform substantially all of the material acts that constituted his usual activities on 90 of the 180 days after the accident.

**Actual Case: \$62,000** Bronx County jury award for past pain and suffering only (-0- for future pain) affirmed by the appellate court for a 38 year court officer injured in an elevator fall accident. She underwent a cervical discectomy and fusion and was bedridden for three months. Plaintiff suffered a neck injury requiring surgery two years before this accident, and the jury found that she did not permanently aggravate her pre-existing conditions or suffer any new serious injuries.

**Low Range of Value for Pain and Suffering for Neck Injuries: \$100,000 to \$400,000**

Pain and suffering in a neck injury case is often in the \$100,000 to \$400,000 range when any or all of the following factors are present: clear disc

herniations (not just bulges); a car accident in which plaintiff can easily meet the “serious injury” statutory threshold; surgery such as a discectomy or laminectomy; no significant pre-existing neck injury; there is only a fair recovery; there is likely future pain or disability; trial in an area where juries are about average in their awards.

**Actual Case: \$100,000** Nassau County jury award for a 72 year old woman whose car was struck by another car in the rear. She sustained a non-displaced fracture of her odontoid process (a tooth like structure emerging from the top of C-2) and disc herniations at C3-4, C4-5 and C5-6. She underwent physical therapy for two years but no surgery.

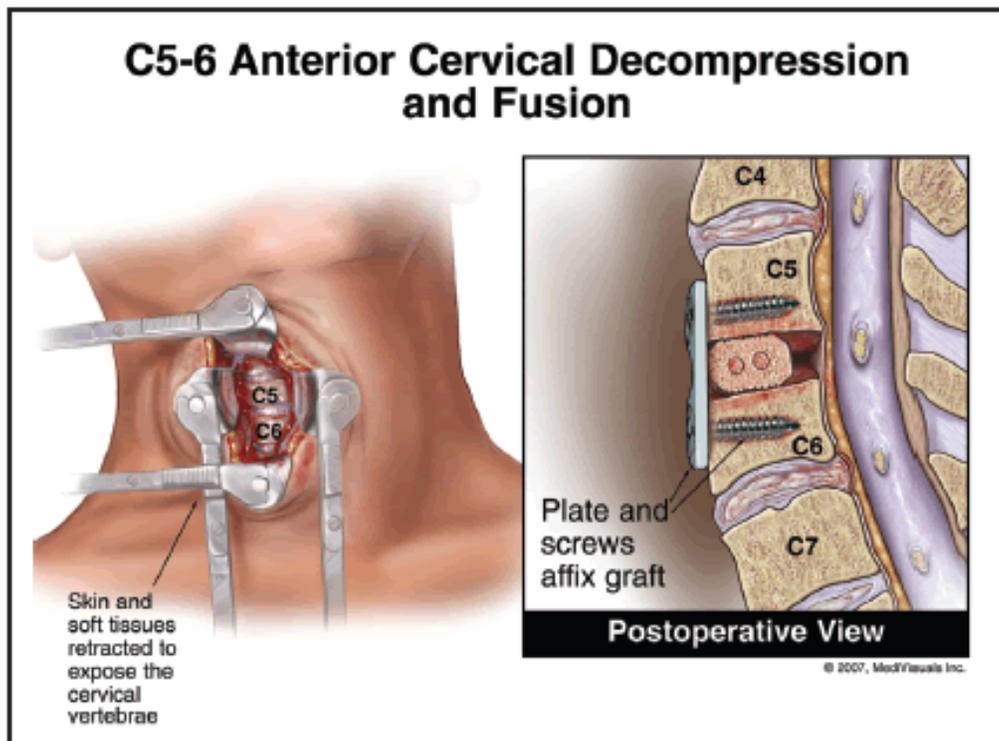
**Actual Case: \$300,000** appellate court determination (Kings county jury awarded \$360,000) for a woman in a car accident who sustained disc herniations at C3-4 and C5-6

requiring surgery and resulting in a 60% loss of neck range of motion.

**Actual Case: \$360,000** settlement in a New York County case for a 30 year old police officer in a car accident who sustained a herniated disc at C5-6 with compression of a nerve root. He had permanent residual limitation of his neck range of motion.

**Mid Range of Value for Pain and Suffering for Neck Injuries: \$400,000 to \$900,000**

Pain and suffering in a neck injury case is often in the \$400,000 to \$900,000 range when any or all of the following factors are present: clear disc herniations that impinge on spinal nerves; the plaintiff is under the age of 40 and was physically active; fusion surgery or multiple level discectomies or laminectomies; no pre-existing neck injury at all; poor recovery with significant future pain or disability; trial in an area where juries are liberal in their awards.



**Actual Case: \$650,000** settlement in a Suffolk County car accident case for a 38 year old nurse. She sustained herniated discs at C5- 6 and C6-7 requiring a cervical discectomy and cervical fusion surgery in which a metal plate was implanted.

**Actual Case: \$850,000** Queens County jury verdict for a 40 year old fireman who was struck by a falling ceiling and sustained a herniated disc at C5-6 and underwent a discectomy and a fusion surgery with a bone graft and screws. He could no longer participate in sports or return to a part-time union carpentry position.

### High Range of Value for Pain and Suffering for Neck Injuries: \$1,000,000 to \$10,000,000

Pain and suffering in a neck injury case may be in the \$1,000,000 or more range when there has been fusion surgery with continuing and permanent pain and disability following surgery; when there is a total inability to return to work or any recreational activity; when plaintiff requires daily prescribed narcotic pain medication; when additional surgery may be needed; and when trial is in an area where juries are liberal in their awards. Pain and suffering awards for more than \$3,000,000 have been sustained by appellate courts typically when the injured party has been rendered a paraplegic or worse.

**Actual Case: \$1,500,000** verdict in Bronx County for a 48 year old truck driver in a car accident who sustained three herniated cervical discs (one of which was “giant”) with impingement on nerve roots requiring one surgical fusion to date and the likelihood of one more. Plaintiff returned to work for six months but thereafter was unable to ever return.

**Actual Case: \$4,000,000** appellate court determination for a teenager in a diving accident

who struck his head on the ocean floor and was rendered paralyzed. The Kings county jury had awarded \$10,000,000 but the appellate court held that the amount was excessive and reduced it to \$4,000,000.

**Actual Case: \$6,500,000** Genesee County jury award for a roofer in his 30’s who fell 45 feet and suffered cervical fractures at C5-6 which left him with permanent quadriplegia.

#### You're Invited to Call or E-mail!

*"If you have suffered a neck injury, you're invited to call me. I will ask questions about your injury and help you determine the value of your claim.*

Call me toll free at 1-800-530-4660 or e-mail [jhochfelder@newyorkinjurycases.com](mailto:jhochfelder@newyorkinjurycases.com)

*I promise I'll do everything I can to help you."*

—John Hochfelder

## Definitions

**Bulging Disk** - When the displaced material causes a discrete bulge in the annulus, but no material escapes through the annular fibers.

**Cervical Vertebrae** - The upper seven vertebrae that form the skeleton of the neck, located above the thoracic vertebrae. They are referred to as C-1, C-2, C-3, C-4, C-5, C-6 and C-7.

**Degenerative Disk Disease** - A condition in which the intervertebral disk loses its normal structural integrity as a result of wear and tear, repeated injuries, or aging. Secondary effects may be disk space narrowing and formation of osteophytes.

**Discectomy** - An excision of all or part of an intervertebral disc often done to decompress a nerve root.

**Disk** - A circular or rounded flat plate commonly used to refer to the intervertebral disk, which is composed of a nucleus pulposus and an annular fibrosis. It is like a soft, rubbery pad between the hard vertebral bones. **Nucleus Pulposus:** The central, semi-elastic, spongy zone of the intervertebral disk. **Annulus Fibrosus:** The outer concentric layers of the fibrous tissue in the intervertebral disks.

**Herniated Disk** (also called ruptured or slipped disk) - A pathologic condition in which the nucleus pulposus of an intervertebral disk has protruded through the surrounding fibrocartilage or annulus fibrosis.

**Laminectomy** - Surgical removal of the posterior bony arches of one or more vertebrae in order to expose the neural elements in the spinal cord.

**Ligament** - A cord, band or sheet of fibrous connective tissue, linking two or more bones or other structures together. They usually impart stability and prevent excessive motion in certain directions.

**Paraplegia** - An impairment in motor and/or sensory function of the lower extremities.

**Quadriplegia** - Paralysis that affects the arms as well as the lower extremities.

**Radiculopathy** - An abnormality of a spinal nerve secondary to irritation of the root causing sensory changes such as tingling, numbness and weakness.

**Spinal Fusion** - A surgical process by which two or more vertebrae are fused together with bone grafts and internal devices such as metal rods to heal into a single solid bone. The surgery eliminates motion between vertebrae segments, which may be desirable when motion is the cause of significant pain.

**Spinal Stenosis** - A narrowing of the spinal cord canal which causes cord or spinal nerve compression.

**Spine** - The backbone or vertebral column, composed of vertebrae separated by intervertebral disks and bound together by ligaments.

**Vertebrae** - One of the bony segments of the spinal column. There are 33: 7 cervical (neck), 12 thoracic, 5 lumbar (back), 5 sacral and 4 coccygeal. Each consists of a body, or centrum. An arch of bone, the neural arch, arises from the body to enclose a cavity, the vertebral canal, through which the spinal cord passes.